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SUPPLEMENTAL REPORT FOR THE CONSIDERATION OF H.R. 4428

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Mr. PEPPER, from the Committee on Rules, submitted the following

SUPPLEMENTAL REPORT

[To accompany H. Res. 523]

The following is the text of the substitute as proposed by Representative Courter of New Jersey, the amendments as proposed to the amendment offered by Mr. Mavroules of Massachusetts, as printed in the initial House report to accompany House Resolution 523, and the amendments as proposed to the substitute amendment as proposed by Mr. Courter of New Jersey, as printed herein.

SUBSTITUTE OFFERED BY MR. COURTER OF NEW JERSEY FOR THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

Page 182, strike out lines 16 through 22 and insert in lieu thereof the following:

"(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted—

"(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a representative of the contracting officer designated by the contracting officer for the purposes of the negotiation of the contract); or

"(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor."

Strike out section 921 (page 201, line 16 through page 208, line 19) and insert in lieu thereof the following new section:

SEC. 921. SAFEGUARDING OF MILITARY WHISTLEBLOWERS.

(a) FINDINGS.—The Congress makes the following findings:

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(1) In the course of their duties, members of the Armed Forces may become aware of information evidencing wrongdoing or waste of funds.

(2) It is generally the duty of members of the Armed Forces to report such information through the chain of command.

(3) Members of the Armed Forces who become aware of such information should be encouraged to disclose it to an Inspector General, and, if necessary, to a Member of Congress.

(4) Members of the Armed Forces who disclose such information should be protected from adverse personnel consequences (or threats thereof) as a result of such disclosures.

(5) Members of the Armed Forces who believe they have been subject to retaliation (or the threat thereof) should have the right to an expeditious Inspector General investigation and administrative review of their cases.

(b) WHISTLEBLOWER PROTECTION.—(1) Section 1034 of title 10, United States Code, relating to communicating with a Member of Congress, is amended to read as follows:

"§ 1034. Communicating with a Member of Congress or Inspector General

"(a) RESTRICTING COMMUNICATIONS WITH MEMBERS OF CONGRESS AND INSPECTORS GENERAL PROHIBITED.—

"(1) GENERAL RULE.—No person may restrict a member of an armed force in communicating with a Member of Congress or an Inspector General.

"(2) EXCEPTIONS.—Paragraph (1) does not apply to a communication that—

"(A) is unlawful; or

"(B) violates a regulation necessary to the security of the United States.

"(b) PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.—No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of an armed force for making or preparing a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted.

"(c) INSPECTOR GENERAL INVESTIGATION.—

"(1) INVESTIGATION OF CERTAIN ALLEGATIONS.—The Inspector General of the Department of Defense shall expeditiously investigate an allegation by a member of the armed forces that a reprisal prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication to a Member of Congress or an Inspector General making a complaint or disclosing information that the member of the armed forces reasonably believes evidences—

"(A) a violation of a law, rule, or regulation; or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(2) TIME FOR ALLEGATION.—The Inspector General is not required to make an investigation under paragraph (1) in the

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case of an allegation made more than 90 days after the reprisal (or threatened reprisal) that is the subject of the allegation.

"(3) INVESTIGATION OF SUBJECT MATTER OF DISCLOSURE.—If the Inspector General has not already done so, the Inspector General shall commence a separate investigation of the information that the member believes evidences wrongdoing as described in subparagraph (A) or (B) of paragraph (1).

"(4) REPORT.—Not later than 10 days after completion of an investigation under this subsection, the Inspector General shall submit a report on the results of the investigation to the Secretary of Defense. The Inspector General shall provide a copy of the unclassified portions of that report to the member concerned.

"(5) TIME FOR REPORT.—If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (2) within 30 days of the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense and to the member making the allegation a notice—

"(A) of that determination (including the reasons why the report may not be submitted within that time); and

"(B) of the time when the Inspector General anticipates the report will be submitted.

"(6) CONTENT OF REPORT.—The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. If a person agrees to be interviewed only on the condition that the person's identity not be disclosed, the report shall not contain any information which might disclose the identity of that person. The report shall contain no findings of fact or recommendations as to the disposition of the complaint.

"(7) DELEGATION.—The Inspector General of the Department of Defense may delegate any function, power, or duty of the Inspector General under this subsection to any other Inspector General in the Department of Defense.

"(d) CORRECTION OF RECORDS.—

"(1) BOARDS FOR CORRECTION OF MILITARY RECORDS.—A correction board acting under section 1552 of this title, in considering the request of a member of an armed force to whom the Inspector General has provided a report under subsection (c) (or the request of the heir or legal representative of such a member) to correct the effects of an alleged retaliatory personnel action prohibited under subsection (b), may—

"(A) direct further investigation;

"(B) direct the production of evidence;

"(C) direct the examination of witnesses;

"(D) receive oral argument; or

"(E) direct or conduct an evidentiary hearing.

"(2) BOARD DECISIONS.—The Board shall issue a final decision with respect to the petition within 180 days after the filing of such petition. If the Board fails to issue such a final decision

within such time, the member shall be deemed to have exhausted administrative remedies under section 1552 of this title to the extent that such exhaustion may be required in any judicial proceeding concerning the relief sought in the petition for correction. The decision of the Board shall be in writing and shall include its findings of fact, conclusions, recommendations, and a statement of reasons for the decision. The Board shall cause its decision to be served on the petitioner by first class mail to the address listed in the petition for correction within 10 days of the date of the decision. A determination by the Secretary by a preponderance of the evidence that a personnel action adversely affecting a member would not have been taken in the absence of a complaint or disclosure of information described in subsection (c)(1) shall constitute a determination of a prohibited retaliatory personnel action under subsection (b).

"(3) CORRECTIVE ACTION.—The Secretary shall order such action as is necessary to correct the record and the effect of a prohibited retaliatory personnel action.

"(4) DISCIPLINARY ACTION.—If the Secretary determines that a prohibited retaliatory personnel action, as defined in subsection (b), has occurred, the Board shall refer the record of the matter to the Secretary concerned.

"(e) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section. Such regulations shall include regulations for which violations are subject to section 892 of this title (article 92 of the Uniform Code of Military Justice).".

(2) The item relating to such section in the table of sections at the beginning of chapter 53 of such title is amended to read as follows:

"1034. Communicating with a Member of Congress or Inspector General.".

(c) DEADLINE FOR REGULATIONS.—The Secretary of Defense and the Secretary of Transportation shall prescribe regulations required by subsection (e) of section 1034 of title 10, United States Code, as added by subsection (a), not later than 120 days after the date of the enactment of this Act.

Strike out section 922 (page 208, line 20 through page 212, line 13), and redesignate the following sections accordingly.

Strike out section 923 (page 212, lines 14 through 19) and insert in lieu thereof the following:

SEC. 923. COST AND PRICE MANAGEMENT IN DEFENSE PROCUREMENT.

(a) REVISION OF SECTION 917 COST AND PRICE MANAGEMENT PROVISION.—(1) Section 2406 of title 10, United States Code, as added by section 917 of the Department of Defense Authorization Act, 1986 (Public Law 99-145), is amended to read as follows:

"§ 2406. Work measurement data: availability of records

"(a) PURPOSE.—The purpose of this section is to provide for certain work measurement data maintained by defense contractors to be available in a timely manner to the Department of Defense and to Congress.

"(b) RECORDS TO BE AVAILABLE PROMPTLY.—(1) Subject to subsection (e), the head of an agency shall require the contractor under a covered contract with that agency to make available promptly to the agency, in the form in which the contractor maintains such data, all work measurement data relating to the proposed and negotiated costs of the contract.

"(2) For purposes of this section, a contractor's work measurement data consists of all data relating to current industrial engineering standard hours of work content and all other work-measurement information of the contractor.

"(c) VERIFICATION BY AUDIT.—The contractor's standard hours of work content specified in the contractor's bill for payment of labor costs shall be subject to verification by audit.

"(d) PERIOD FOR WHICH RECORDS SHALL BE AVAILABLE.—Regulations prescribed to carry out this section shall specify the period for which records covered by this section shall be available to the agency concerned. Such period shall extend for not less than three years after final payment under the contract to which the records pertain.

"(e) EXCLUSIONS.—(1) This section does not authorize or require the head of an agency to require a contractor to maintain records of or to make available information under this section if the contractor does not otherwise maintain the information—

"(A) under section 2306(f) of this title or some other provision of law (other than this section) or regulation;

"(B) under the terms of a contract provision required under any such law or regulation; or

"(C) for its own management purposes.

"(2) This section does not require a contractor to change the format of or content of information it maintains.

"(f) DEFINITIONS.—In this section:

"(1) The term 'head of an agency' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force.

"(2) The term 'covered contract' means a contract with the United States—

"(A) that is for full-scale production of a major defense acquisition program; and

"(B) that is subject to the provisions of section 2306(f) of this title.

"(3) The term 'major defense acquisition program' means a program subject to the Selected Acquisition Report requirements under section 139a of this title.".

(2) The item relating to section 2406 in the table of sections at the beginning of chapter 137 of such title is amended to read as follows:

"2406. Work measurement data: availability of records.".

(b) APPLICABILITY OF SECTION.—Section 2406 of title 10, United States Code, as amended by subsection (a), shall apply with respect to contracts entered into on or after November 8, 1985.

At the end of title IX of division A (page 214, after line 18), insert the following new sections:

SEC. 925. CONFLICT-OF-INTEREST IN DEFENSE PROCUREMENT.

(a) IN GENERAL.—(1) Chapter 141 of title 10, United States Code, is amended by inserting after section 2397a the following new sections:

"§ 2397b. Certain former Department of Defense procurement officials: limitations on employment by contractors

"(a)(1) Any person—

"(A) who is a former officer or employee of the Department of Defense or a former or retired member of the armed forces; and

"(B) who, during the two-year period preceding the person's separation from service in the Department of Defense, participated personally and substantially, and in a manner involving decisionmaking responsibilities, in a procurement function with respect to a contract through contact with the contractor,

may not accept compensation from that contractor for a period of two years following the person's separation from service in the Department of Defense.

"(2) In paragraph (1), the term 'decisionmaking responsibilities' includes the following activities with respect to a contract: approval or disapproval, or making recommendations or engaging in negotiations, with regard to a procurement function.

"(3) For purposes of paragraph (1), whether or not a person is a contractor (as defined in subsection (f)(2)) is determined as of the date of the separation from service of the officer or employee of the Department of Defense or member of the armed forces involved.

"(4) Any person who knowingly violates paragraph (1) shall be imprisoned for not more than one year and shall be subject to a fine in the amount provided in title 18.

"(5) Any person who knowingly offers or provides any compensation to another person, and who knew or should have known that the acceptance of such compensation is or would be in violation of paragraph (1), shall be imprisoned for not more than one year and shall be subject to a fine in the amount provided in title 18.

"(b)(1) This section applies only to—

"(A) civilian positions for which the rate of pay is equal to or greater than the minimum rate of pay payable for grade GS–13 of the General Schedule; and

"(B) positions held by members of the armed forces in a pay grade of O–4 or higher.

"(2)(A) When a vacancy occurs in a sensitive civilian procurement executive position, the Secretary of Defense, with the concurrence of the Director of the Office of Government Ethics, may exempt the person appointed to fill the vacancy from the provisions of subsection (a) by reason of service in such position.

"(B) For purposes of subparagraph (A), a sensitive civilian procurement executive position is a position—

"(i) which is identified under paragraph (1);

"(ii) which is a civilian position to which a person is appointed by the President, by and with the advice and consent of the Senate; and

"(iii) with respect to which the Secretary of Defense determines that the duties inherent in the position involve personal

and substantial participation in procurement functions (to the extent to which subsection (a)(1) applies) with so many contractors that implementation of subsection (a) with respect to persons serving in the position would seriously hamper the ability of the Department of Defense to obtain the services of a highly qualified person to serve in the position.

"(C) An exemption granted under this paragraph shall not apply to the extent that the person granted the exemption acts as a government representative in the negotiation or settlement of a contract with a contractor.

"(D) Whenever the Secretary of Defense grants an exemption under this paragraph, the Secretary shall promptly submit to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and the Judiciary of the House of Representatives a report describing the exemption and setting forth the specific reasons for the exemption.

"(c) The Secretary of Defense shall provide to each person separated from service in the Department of Defense in a position described in subsection (b)(1) who, within the two years preceding the date of such separation, participated in a procurement function of the Department a notice with respect to this section. Such notice shall include—

"(1) a written explanation of the provisions of this section; and

"(2) the name of each contractor from whom such person is prohibited from accepting compensation under this section.

"(d) This section does not apply—

"(1) to a contract for an amount less than $100,000;

"(2) to compensation of a person by an entity that did not have a Department of Defense contract in excess of $100,000 at the time the person participated personally and substantially in a procurement function (to the extent to which subsection (a)(1) applies) with respect to a contract with that entity; or

"(3) to a contractor that was awarded contracts by the Department of Defense during the preceding fiscal year in a total amount less than $100,000.

"(e)(1) A person who is considering the propriety of accepting compensation that might place the person in violation of subsection (a) may, before acceptance of such compensation, apply to the Director of the Office of Government Ethics for advice on the applicability of this section to the acceptance of such compensation.

"(2) An application under paragraph (1) shall contain such information as the Director requires.

"(f) In this section:

"(1) The term 'compensation' includes any payment, gift, benefit, reward, favor, or gratuity—

"(A) which is provided, directly or indirectly, for services rendered; and

"(B) which is valued in excess of $250 at the prevailing market price.

"(2) The term 'contractor' means—

"(A) a person that contracts to supply the Department of Defense with goods or services; and

"(B) a person that controls, is controlled by, or is under common control with, a person described in subparagraph (A).

Such term does not include a State or local government or an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code.

"(3) The term 'procurement function' includes, with respect to a contract, any function relating to—

"(A) the negotiation, award, administration, or approval of the contract;

"(B) the selection of a contractor;

"(C) the approval of changes in the contract;

"(D) quality assurance, operational and developmental testing, the approval of payment, or auditing under the contract; or

"(E) the management of the procurement program.

"(4) The term 'armed forces' does not include the Coast Guard.

"(g) For the purposes of this section and section 2397c of this title, a member or former member of the armed forces shall be considered to have been separated from service in the Department of Defense upon the member's discharge or release from active duty.

"§ 2397c. Defense contractors: requirements concerning former Department of Defense officials

"(a)(1) With respect to a contractor that during a fiscal year enters into contracts with the Department of Defense for the procurement of goods and services in amounts aggregating $100,000 or more, each contract for procurement of goods or services entered into by the Department with that contractor during the next fiscal year shall include a provision under which the contractor agrees not to provide compensation to a person if the acceptance of such compensation by such person would violate section 2397b(a)(1) of this title.

"(2) Such a contract shall also provide that if the contractor knowingly violates a contract provision required by paragraph (1) the contractor shall pay to the United States, as liquidated damages under the contract, an amount equal to the greater of—

"(A) $100,000; or

"(B) three times the compensation paid by the contractor to the person in violation of such contract provision.

"(b)(1)(A) Each contractor subject during a calendar year to a contract term described in subsection (a) shall submit to the Secretary of Defense not later than April 1 of the next year a report covering the preceding calendar year. Each such report shall list the name of each person (together with other information adequate for the Government to identify the person) who—

"(i) is a former officer or employee of the Department of Defense or a former or retired member of the armed forces; and

"(ii) was provided compensation by that contractor during the preceding calendar year, if such compensation was provided within two years after such officer, employee, or member left service in the Department of Defense.

"(B) Each such listing shall—

"(i) show each agency in which the person was employed or served on active duty during the last two years of the person's service in the Government;

"(ii) show the person's job titles during the last two years of the person's service in the Government;

"(iii) contain a full and complete description of the duties of the person during the last two years of such service; and

"(iv) contain a description of the duties (if any) that the person is performing on behalf of the contractor.

"(2) A person who knowingly fails to file a report required by paragraph (1) shall be fined not more than $10,000.

"(3) The Secretary of Defense shall review each report under paragraph (1) to assess the report for accuracy and completeness and for the purpose of identifying possible violations of paragraph (1) or section 2397b(a) of this title or of a contract provision required by subsection (a). The Secretary shall report any such possible violation to the Attorney General.

"(c)(1) The Director of the Office of Government Ethics shall have access to the reports submitted under subsection (b)(1) and shall conduct an annual random review of the reports for violations of section 2397b(a) of this title and subsections (a) and (b)(1).

"(2) Not later than October 1 of each year, the Director shall submit to Congress a report on the operation of this section. Each such report shall include the findings of the Director based on the examination of reports for the preceding calendar year.

"(d) This section does not apply to a contract for an amount less than $100,000.

"(e) The definitions set forth in section 2397b(f) of this title apply to this section.".

(2) The table of sections at the beginning of chapter 141 of title 10, United States Code, is amended by inserting after the item relating to section 2397a the following new items:

"2397b. Certain former Department of Defense procurement officials: limitations on employment by contractors.

"2397c. Defense contractors: requirements concerning former Department of Defense officials.".

(b) REPEALS.—Effective on the effective date of this section, the following sections are repealed:

(1) Section 921 of the Defense Procurement Improvement Act of 1985 (title IX of Public Law 99-145; 10 U.S.C. 2397a note).

(2) Section 281 of title 18, United States Code (to the extent that such section was not repealed by section 2 of Public Law 87-849 (76 Stat. 1126)).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), this section and the amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

(2) EFFECTIVE DATE FOR REGULATORY AUTHORITY.—Subsection (b) of section 2397b of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act. The Secretary of Defense shall prescribe and publish in the Federal Register regulations under that subsection not later than 180 days after such date.

(3) EFFECT ON EMPLOYMENT.—(A) The amendments made by this section—

(i) do not preclude the continuation of employment that began before the effective date of this section or the acceptance of compensation for such employment; and

(ii) do not, except as provided in subparagraph (B), apply to a person whose service in the Department of Defense terminates before the effective date of this section.

(B) Subparagraph (A)(ii) does not preclude the application of the amendments made by this section to a person with respect to service in the Department of Defense by such person on or after the effective date of this section.

(4) EFFECTIVE DATE FOR REPORTING REQUIREMENT.—The first report under section 2397c(c)(2) of title 10, United States Code, as added by subsection (a), shall be submitted not later than October 1, 1987.

SEC. 926. REQUIREMENTS RELATING TO UNDEFINITIZED CONTRACTUAL ACTIONS.

(a) LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—

(1) LIMITATION ON USE OF FUNDS.—(A) On the last day of a fiscal quarter during a covered fiscal year, the total amount of funds represented by undefinitized contractual actions (as determined under paragraph (3)) entered into by the Secretary of Defense (with respect to the Defense Logistics Agency) or the Secretary of a military department during the reporting period with respect to such quarter may not exceed 10 percent of the total amount of funds represented by all contractual actions entered into by the Secretary during such period.

(B) If at the end of a fiscal quarter during a covered fiscal year the amount of funds represented by undefinitized contractual actions under the jurisdiction of a Secretary that were entered into during the reporting period with respect to such quarter exceeds the limit established in subparagraph (A), the Secretary may not enter into any additional undefinitized contractual actions until the Secretary certifies to Congress that the amount of funds represented by undefinitized contractual actions has been reduced so that entering into additional undefinitized contractual actions would not result in a breach of the limit established in subparagraph (A) for the next reporting period.

(2) QUARTERLY REPORTS TO DEFENSE COMMITTEES.—(A) The Secretary of Defense and the Secretaries of the military departments shall submit a report described in subparagraph (B) with respect to any fiscal year quarter—

(i) that ends after the date of the enactment of this Act; and

(ii) in which there is a breach of the limit described in paragraph (1)(A).

(B) A report required by subparagraph (A) shall include information concerning—

(i) the amount of funds represented by contractual actions under the jurisdiction of the Secretary that were en-

tered into during the reporting period with respect to the quarter for which the report is submitted; and

(ii) the total amount of such funds represented by undefinitized contractual actions.

(C) A report required by subparagraph (A) shall be submitted not later than the end of the 45-day period beginning on the first day following the fiscal year quarter for which the report is required to be submitted.

(3) DETERMINATION OF AMOUNTS OF CONTRACTUAL ACTIONS.—For purposes of this section, the amount of funds represented by a contractual action shall be—

(A) the contractual price; or

(B) in the case of an undefinitized contractual action, the negotiated overall ceiling price.

(4) DEFINITIONS.—For purposes of this subsection:

(A) The term "covered fiscal year" means fiscal year 1987 or 1988.

(B) The term "defense committees" means the Committees on Armed Services and on Appropriations of the Senate and House of Representatives.

(C) The term "reporting period" means, with respect to any quarter of a covered fiscal year, the period beginning on the first day of such fiscal year and ending on the last day of such quarter.

(D) The term "Secretary concerned" means—

(i) the Secretary of Defense, with respect to matters concerning the Defense Logistics Agency; and

(ii) the Secretary of a military department, with respect to matters concerning that military department.

(E) The term "undefinitized contractual action" has the meaning given such term in section 2325(g) of title 10, United States Code (as added by section 3(a)(1)).

(b) REQUIREMENTS WITH RESPECT TO UNDEFINITIZED CONTRACTUAL ACTIONS.—

(1) IN GENERAL.—(A) Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2325. Undefinitized contractual actions: restrictions

"(a) IN GENERAL.—The head of an agency may not enter into an undefinitized contractual action unless—

"(1) the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action; and

"(2) the contractual action provides for determination of contractual terms, specifications, and price by the earlier of—

"(A) the end of the 180-day period beginning on the date that the contractual action is initiated; or

"(B) the date on which the amount of funds obligated or expended under the contract is equal to 50 percent of the amount of the negotiated overall ceiling price.

"(b) LIMITATION ON OBLIGATION OF FUNDS.—(1) Except as provided in paragraphs (2) and (3), the contracting officer for an undefinitized contractual action may not expend with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

"(2) Except as provided in paragraph (3), if a contractor submits a proposal to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is expended on such action, the contracting officer for such action may not expend with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

"(3)(A) Paragraphs (1) and (2) shall not apply to the expenditure of funds with respect to an undefinitized contractual action if such expenditure is approved by the head of the agency concerned.

"(B) The authority of the head of an agency under this paragraph may not be delegated to a person who holds a rank below that of commander or deputy commander of a major subordinate command, or the equivalent of such rank, as determined under regulations prescribed by the Secretary of Defense.

"(c) INCLUSION OF NON-URGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action for spare parts and support equipment that are needed on an urgent basis unless the head of the agency approves such inclusion as being—

"(1) good business practice; and

"(2) in the best interests of the United States.

"(d) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the head of the agency approves such modification as being—

"(1) good business practice; and

"(2) in the best interests of the United States.

"(e) ALLOWABLE PROFIT.—The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

"(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

"(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

"(f) APPLICABILITY.—This section does not apply—

"(1) to the Coast Guard or the National Aeronautics and Space Administration; or

"(2) to the purchase of items with advance procurement funds for an end item that are authorized to be appropriated by an Act or joint resolution, if such items are required to be purchased significantly earlier than other components, parts, and materials with respect to the same end item.

"(g) DEFINITION.—In this section, the term 'undefinitized contractual action' means a new procurement action entered into by the head of an agency for an amount of more than $25,000 for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action. Such term does not include procurement actions entered into on behalf of or in support of foreign military organizations.".

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2325. Undefinitized contractual actions: restrictions.".

(2) EFFECTIVE DATE.—Section 2325 of title 10, United States Code (as added by subsection (a)(1)), applies to undefinitized contractual actions that are entered into after the end of the 180-day period beginning on the date of the enactment of this Act.

SEC. 927. BUDGETING FOR DEFENSE INFLATION.

(a) IN GENERAL.—(1) Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2214. Budgeting and accounting for inflation

"(a) INFLATION IN DEFENSE BUDGETING.—In preparing the budget of the Department of Defense to be included in the budget the President submits to Congress under section 1105 of title 31 for any fiscal year, the Secretary of Defense shall set out separately for each budget account the portion of the amount requested for that account that is required to offset estimated inflation.

"(b) LIMITATION ON AN AMOUNT REQUESTED TO OFFSET ESTIMATED INFLATION.—The total amount requested in such budget as required to offset estimated inflation on purchases of property and services by the Department of Defense (other than purchases of fuel and foreign currency and amounts requested for pay and retirement benefits) may not exceed the amount that would be required to offset inflation on such purchases were inflation to be estimated at the rates projected in the President's budget for the gross national product deflator.

"(c) COMPARISONS TO PRIOR FISCAL YEARS.—In preparing such budget, the Secretary shall set out separately for each budget account a comparison, for the fiscal year during which the budget is submitted and the most recently completed fiscal year, of the portions of the amounts appropriated for such accounts that were required and are currently estimated to be required to offset inflation.

"(d) IDENTIFICATION OF INFLATION INDEXES.—If the amount required to offset inflation for any budget account in any fiscal year shown in such budget (other than purchases and amounts excepted in subsection (b)) is based on actual or projected rates of inflation different than the actual or projected rates for the gross national product deflator set forth in such budget, the Secretary shall include in the budget a description of the inflation index used and a justification for its use, together with an estimate of the amount required to offset inflation for such account using the actual and projected rates for the gross national product deflator set forth in such budget.

"(e) PROGRAM ADJUSTMENTS.—If any program adjustment is proposed to or made by Congress with respect to the amount requested or made available for any budget account, the Secretary shall identify the effect of such adjustment on that portion of such amount that was required to offset inflation.

"(f) INFLATION FUND.—(1) There is established in the Treasury a fund to be known as the 'Defense Inflation Fund'. The fund shall be administered by the Secretary of Defense. As part of the budget of the Department of Defense to be included in the President's budget submitted to Congress, the Secretary shall report—

"(A) the balance then in the fund; and

"(B) the amounts estimated to be paid from the fund to offset inflation in each budgetary account.

"(2) Amounts appropriated for a fiscal year to cover amounts required to offset inflation in major defense acquisition programs shall be appropriated to the fund.

"(3) Subject to paragraph (4), amounts in the fund shall be used by the Secretary of Defense without fiscal year limitation to meet costs for inflation—

"(A) under contracts subject to section 2408 of this title, to the extent that those costs are authorized to be paid by contract provisions required by that section; and

"(B) for that portion of spending for major defense acquisition programs that is not made under contracts subject to section 2408 of this title, in accordance with procedures approved by the Secretary of Defense.

"(4) Amounts in the fund may not be used to meet the costs of changes in contract prices due to changes in the specification of the property or services being purchased.

"(5) In this subsection, the term 'major defense acquisition program' means a Department of Defense procurement program—

"(A) that is designated by the Secretary of Defense as a major defense acquisition program; or

"(B) that is estimated by the Secretary of Defense to require an eventual total expenditure for procurement of more than $1,000,000,000 (based on fiscal year 1980 constant dollars).".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2214. Budgeting and accounting for inflation.".

(b) EFFECTIVE DATE.—Section 2214 of title 10, United States Code, as added by subsection (a), shall take effect with respect to fiscal year 1988.

SEC. 928. INFLATION ADJUSTMENT CLAUSES IN MAJOR PROCUREMENT CONTRACTS.

(a) CONTRACT CLAUSE REQUIRED.—(1) Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2408. Major procurement contracts: economic price adjustment clauses

"(a) REQUIRED CONTRACT CLAUSES.—The Secretary of Defense shall require that each major procurement contract include an eco-

nomic price adjustment clause providing for adjustments in contract prices to compensate for inflation over the life of the contract.

"(b) LIMITATIONS.—An economic price adjustment clause included in a contract pursuant to subsection (a)—

"(1) may not be based on an index or indices measuring inflation for a sector of the economy in which purchases, or wages paid, by the contractor constitute more than 20 percent of total purchases or wages paid;

"(2) may not be based on an index or indices measuring inflation for a sector of the economy in which purchases for national security or military purposes, or wages paid by contractors with the Department of Defense or their subcontractors, are predominant, unless the Committees on Armed Services of the Senate and House of Representatives have been notified in writing of a proposal to base a clause on such an index or indices and 30 days of continuous session of Congress have expired following the date such notice is received; and

"(3) may not permit to be included as inflation under the contract a change in contract prices due to changes in the specifications of the property or service being purchased, except that if any such change in prices becomes effective, the contract may provide for adjustment in the change in price to compensate for inflation over the remaining life of the contract.

"(c) DEFINITION.—In this section, the term 'major procurement contract' means a contract (other than a cost reimbursement contract) for the purchase of property or services awarded after using procedures other than sealed bid procedures which is performable over a period greater than two years and which—

"(1) is a prime contract under a major defense acquisition program for the purposes of section 2214 of this title; or

"(2) is an associate or Government-furnished equipment contract under such a major defense acquisition program which is one of the six largest contracts under such program in dollar amount and which is for an amount in excess of $2,000,000.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2408. Major procurement contracts: economic price adjustment clauses.".

(b) EFFECTIVE DATE.—Section 2408 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into after the end of the 180-day period beginning on the date of the enactment of this Act.

SEC. 929. GAO REPORT ON IMPLEMENTATION OF DEFENSE BUDGETING FOR INFLATION.

The Comptroller General shall periodically report to Congress on implementation by the Department of Defense of the requirements of sections 2214 and 2408 of title 10, United States Code, as added by the amendments made by sections 936(a) and 937(a). Each such report shall include any recommendations of the Comptroller General for further legislative action.

SEC. 930. GAO REPORT ON DEFENSE FINANCIAL MANAGEMENT SYSTEM.

(a) REPORT.—The Comptroller General shall submit to Congress a report setting forth a proposed financial management system for the Department of Defense. The proposed financial management system shall be designed to reconcile—

(1) funds appropriated or otherwise made available to the Department of Defense, with

(2) funds obligated by the Department.

(b) DEADLINE FOR REPORT.—The report required by subsection (a) shall be submitted not later than the end of the six-month period beginning on the date of the enactment of this Act.

SEC. 931. CODIFICATION OF REQUIREMENT FOR PERIODIC REPORTS ON UNOBLIGATED BALANCES.

(a) PERIODIC REPORTS ON UNOBLIGATED BALANCES.—(1) Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2215. Reports on unobligated balances

"(a) REQUIRED REPORTS.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives reports (at the times specified under subsection (d)) containing an estimate of the amount of funds in each appropriation account of the Department of Defense that at the time of the report—

"(1) is available for obligation; and

"(2) is in excess of the amount needed to carry out the programs for which the funds were appropriated.

"(b) MATTERS TO BE INCLUDED.—Each report under subsection (a) shall set forth separately for each account estimates of amounts attributable to—

"(1) inflation savings;

"(2) foreign currency savings;

"(3) excess working capital fund cash; and

"(4) all other savings.

"(c) UNANTICIPATED COST INCREASES.—Each such report shall also identify unanticipated cost increases resulting from adverse economic trends.

"(d) SUBMISSION OF REPORTS.—A report under this section shall be submitted to Congress each year—

"(1) with the President's budget for the next fiscal year;

"(2) with the April Budget Update; and

"(3) with the Mid-Session Budget Review.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2215. Reports on unobligated balances.".

(b) REPEAL OF SOURCE LAW.—Section 1407 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 745), is repealed.

SEC. 932. RELEASE OF TECHNICAL DATA.

(a) IN GENERAL.—Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2326. Release of technical data

"(a) IN GENERAL.—

"(1) RELEASE OF DATA.—The Secretary of Defense shall, if required to release technical data under section 552 of title 5, release technical data to a person requesting such a release if such person pays all costs reasonably attributable to responding to such request, including reasonable charges for the costs of services of agency personnel relating to—

"(A) locating the technical data requested;

"(B) the review of such technical data to determine whether other restrictions apply; and

"(C) duplication and other processing charges.

"(2) REGULATIONS.—The Secretary of Defense shall prescribe regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees under this section. The fees established in such schedule may not exceed comparable fees established under section 9701 of title 31.

"(b) WAIVER.—The Secretary of Defense shall waive the payment of costs required by subsection (a) which are in addition to costs under section 552 of title 5 if—

"(1) the request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable such citizen or corporation to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States;

"(2) the release of technical data is requested in order to comply with the terms of an international agreement; or

"(3) the Secretary determines, in accordance with section 552(a)(4)(A) of title 5, that such a waiver is in the interests of the United States.

"(c) TECHNICAL DATA.—In this section, the term 'technical data' means formulae, designs, drawings, blueprints, technical manuals, or computer software.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2326. Release of technical data.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act.

SEC. 933. THRESHOLDS FOR CERTAIN REQUIREMENTS RELATING TO SMALL PURCHASES.

(a) NOTICE THRESHOLDS.—

(1) SMALL BUSINESS ACT.—Subparagraph (A) of section 8(e)(1) of the Small Business Act (15 U.S.C. 637(e)(1)(A)) is amended—

(A) by striking out "$10,000" each place such term appears in subparagraph (A) and inserting in lieu thereof "$25,000";

(B) by striking out "or" at the end of clause (i);

(C) by striking out the comma at the end of clause (ii) and inserting in lieu thereof "; or"; and

(D) by inserting after clause (ii) the following new clause:

"(iii) solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000, if there is not a reasonable expectation that not less than two offers will be received from responsive and responsible offerors,".

(2) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Subparagraph (A) of section 18(a)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(1)(A)) is amended—

(A) by striking out "$10,000" each place such term appears in subparagraph (A) and inserting in lieu thereof "$25,000";

(B) by striking out "or" at the end of clause (i);

(C) by striking out the comma at the end of clause (ii) and inserting in lieu thereof "; or"; and

(D) by inserting after clause (ii) the following new clause:

"(iii) solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000, if there is not a reasonable expectation that not less than two offers will be received from responsive and responsible offerors,".

(b) SMALL BUSINESS SET-ASIDES.—The first sentence of subsection (j) of section 15 of the Small Business Act (15 U.S.C. 644(j)) is amended by striking out "$10,000" and inserting in lieu thereof "25,000".

SEC. 934. DEFENSE ACQUISITION PERSONNEL COMPENSATION AND MANAGEMENT INITIATIVE.

The Secretary of Defense shall develop a plan for a compensation and personnel management initiative to enhance the professionalism of military personnel in acquisition-related positions.

AMENDMENTS TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

1. AMENDMENT OFFERED BY MRS. BOXER OF CALIFORNIA TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

Insert after the amendment to page 182 the following:

Page 190, line 12, insert "or in part" after "exclusively".

Page 191, line 15, strike out "in part with Federal funds and in part".

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2. AMENDMENT OFFERED BY MR. COURTER OF NEW JERSEY TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

Strike out the matter proposed to be inserted on page 208 of the bill by the amendment and insert in lieu thereof the following:

"(e) JUDICIAL REVIEW.—

"(1) RIGHT OF REVIEW.—(A) A member of an armed force aggrieved by a final order of the Board may obtain judicial review of the order by filing a petition for review before the end of the 60-day period beginning on the later of—

"(i) the date the member received notice of the order of the Board; or

"(ii) the date on which the member was deemed to have exhausted administrative remedies under subsection (d)(3).

"(B) A petition for review under subparagraph (A) shall be filed with the United States Court of Appeals for the Federal Circuit.

"(2) REVIEW OF RECORD.—With respect to any case for which a petition for review is filed under paragraph (1)(A), the court shall—

"(A) review the record; and

"(B) in any case in which it determines that the record fails to resolve significant issues of fact, remand the case to the Board for action consistent with the orders of the court.

"(3) STANDARD OF REVIEW.—The court shall set aside any order of the Board that, upon completion of a review under paragraph (2), is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(4) ATTORNEYS FEES.—If, upon completion of a review under paragraph (2), the court finds that the claim of the member is meritorious, the court shall award such member reasonable attorneys fees and costs under the provisions of section 504 of title 5.

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3. AMENDMENT OFFERED BY MR. COURTER OF NEW JERSEY TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

Strike out the matter proposing to strike out section 923 of the bill.

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4. AMENDMENT OFFERED BY MR. COURTER OF NEW JERSEY TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

In the matter proposing to strike out section 923 of the bill, strike out "and redesignate the following sections accordingly." and insert in lieu thereof the following:

SEC. 923. COST AND PRICE MANAGEMENT IN DEFENSE PROCUREMENT.

(a) REVISION OF SECTION 917 COST AND PRICE MANAGEMENT PROVISION.—(1) Section 2406 of title 10, United States Code, is amended to read as follows:

"§ 2406. Work measurement data: availability of records

"(a) PURPOSE.—The purpose of this section is to provide for certain work measurement data maintained by defense contractors to be available in a timely manner to the Department of Defense and to Congress.

"(b) RECORDS TO BE AVAILABLE PROMPTLY.—(1) Subject to subsection (e), the head of an agency shall require the contractor under a covered contract with that agency to make available promptly to the agency, in the form in which the contractor maintains such data, all work measurement data relating to the proposed and negotiated costs of the contract.

"(2) For purposes of this section, a contractor's work measurement data consists of all data relating to current industrial engineering standard hours of work content and all other work-measurement information of the contractor.

"(c) VERIFICATION BY AUDIT.—The contractor's standard hours of work content specified in the contractor's bill for payment of labor costs shall be subject to verification by audit.

"(d) PERIOD FOR WHICH RECORDS SHALL BE AVAILABLE.—Regulations prescribed to carry out this section shall specify the period for which records covered by this section shall be available to the agency concerned. Such period shall extend for not less than three years after final payment under the contract to which the records pertain.

"(e) EXCLUSIONS.—(1) This section does not authorize or require the head of an agency to require a contractor to maintain records of or to make available information under this section if the contractor does not otherwise maintain the information—

"(A) under section 2306(f) of this title or some other provision of law (other than this section) or regulation;

"(B) under the terms of a contract provision required under any such law or regulation; or

"(C) for its own management purposes.

"(2) This section does not require a contractor to change the format of or content of information it maintains.

"(f) DEFINITIONS.—In this section:

"(1) The term 'head of an agency' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force.

"(2) The term 'covered contract' means a contract with the United States—

"(A) that is for full-scale production of a major defense acquisition program; and

"(B) that is subject to the provisions of section 2306(f) of this title.

"(3) The term 'major defense acquisition program' means a program subject to the Selected Acquistion Report requirements under section 139a of this title.".

(2) The item relating to section 2406 in the table of sections at the beginning of chapter 137 of such title is amended to read as follows:

"2406. Work measurement data: availability of records.".

(b) APPLICABILITY OF SECTION.—Section 2406 of title 10, United States Code, as amended by subsection (a), shall apply with respect to contracts entered into on or after November 8, 1985.

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5. AMENDMENT OFFERED BY MR. DICKINSON OF ALABAMA TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

Strike out subsection (b) of section 925 of the matter proposed to be inserted by the amendment and insert in lieu thereof the following:

(b) REPEALS.—Effective on the effective date of this section, the following sections are repealed:

(1) Section 921 of the Defense Procurement Improvement Act of 1985 (title IX of Public Law 99-145; 10 U.S.C. 2397a note).

(2) Section 281 of title 18, United States Code (to the extent that such section was not repealed by section 2 of Public 87-849 (76 Stat. 1126)).

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6. AMENDMENT OFFERED BY MR. COURTER OF NEW JERSEY TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

Strike out section 926 of the matter proposed to be inserted by the amendment and insert in lieu thereof the following:

SEC. 926. REQUIREMENTS RELATING TO UNDEFINITIZED CONTRACTUAL ACTIONS.

(a) LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—

(1) LIMITATION ON USE OF FUNDS.—(A) On the last day of a fiscal quarter during a covered fiscal year, the total amount of funds represented by undefinitized contractual actions (as determined under paragraph (3)) entered into by the Secretary of Defense (with respect to the Defense Logistics Agency) or the Secretary of a military department during the reporting period with respect to such quarter may not exceed 10 percent of the total amount of funds represented by all contractual actions entered into by the Secretary during such period.

(B) If at the end of a fiscal quarter during a covered fiscal year the amount of funds represented by undefinitized contractual actions under the jurisdiction of a Secretary that were entered into during the reporting period with respect to such quarter exceeds the limit established in subparagraph (A), the Secretary may not enter into any additional undefinitized contractual actions until the Secretary certifies to Congress that the amount of funds represented by undefinitized contractual actions has been reduced so that entering into additional undefinitized contractual actions would not result in a breach of the limit established in subparagraph (A) for the next reporting period.

(2) QUARTERLY REPORTS TO DEFENSE COMMITTEES.—(A) During each covered fiscal year, the Secretary of Defense and the Secretaries of the military departments shall each submit to the defense committees a report at the end of each fiscal year quarter concerning—

(i) the amount of funds represented by contractual actions under the jurisdiction of the Secretary that were entered into during the reporting period with respect to the quarter for which the report is submitted; and

(ii) the total amount of such funds represented by undefinitized contractual actions.

(B) A report required by subparagraph (A) shall be submitted not later than the end of the 45-day period beginning on the first day following the fiscal year quarter for which the report is required to be submitted.

(C) The first reports required by subparagraph (A) shall be with respect to the first fiscal year quarter—

(i) that ends after the date of the enactment of this Act; and

(ii) in which there is a breach of the limit described in paragraph (1)(A).

(3) DETERMINATION OF AMOUNTS OF CONTRACTUAL ACTIONS.—For purposes of this section, the amount of funds represented by a contractual action shall be—

(A) the contractual price; or

(B) in the case of an undefinitized contractual action, the negotiated overall ceiling price.

(4) DEFINITIONS.—For purposes of this subsection:

(A) The term "covered fiscal year" means fiscal year 1987 or 1988.

(B) The term "defense committees" means the Committees on Armed Services and on Appropriations of the Senate and House of Representatives.

(C) The term "reporting period" means, with respect to any quarter of a covered fiscal year, the period beginning on the first day of such fiscal year and ending on the last day of such quarter.

(D) The term "Secretary concerned" means—

(i) the Secretary of Defense, with respect to matters concerning the Defense Logistics Agency; and

(ii) the Secretary of a military department, with respect to matters concerning that military department.

(E) The term "undefinitized contractual action" has the meaning given such term in section 2325(g) of title 10, United States Code (as added by section 3(a)(1)).

(b) REQUIREMENTS WITH RESPECT TO UNDEFINITIZED CONTRACTUAL ACTIONS.—

(1) IN GENERAL.—(A) Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2325. Undefinitized contractual actions: restrictions

"(a) IN GENERAL.—The head of an agency may not enter into an undefinitized contractual action unless—

"(1) the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action; and

"(2) the contractual action provides for determination of contractual terms, specifications, and price by the earlier of—

"(A) the end of the 180-day period beginning on the date that the contractual action is initiated; or

"(B) the date on which the amount of funds obligated or expended under the contract is equal to 50 percent of the amount of the negotiated overall ceiling price.

"(b) LIMITATION ON OBLIGATION OF FUNDS.—(1) Except as provided in paragraphs (2) and (3), the contracting officer for an undefinitized contractual action may not expend with respect to such contractual action an amount that is equal to more than 50 percent of

the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

"(2) Except as provided in paragraph (3), if a contractor submits a proposal to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is expended on such action, the contracting officer for such action may not expend with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

"(3)(A) Paragraphs (1) and (2) shall not apply to the expenditure of funds with respect to an undefinitized contractual action if such expenditure is approved by the head of the agency concerned.

"(B) The authority of the head of an agency under this paragraph may not be delegated to a person who holds a rank below that of commander or deputy commander of a major subordinate command, or the equivalent of such rank, as determined under regulations prescribed by the Secretary of Defense.

"(c) INCLUSION OF NON-URGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action for spare parts and support equipment that are needed on an urgent basis unless the head of the agency approves such inclusion as being—

"(1) good business practice; and

"(2) in the best interests of the United States.

"(d) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the head of the agency approves such modification as being—

"(1) good business practice; and

"(2) in the best interests of the United States.

"(e) ALLOWABLE PROFIT.—The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

"(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

"(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

"(f) APPLICABILITY.—This section does not apply—

"(1) to the Coast Guard or the National Aeronautics and Space Administration; or

"(2) to the purchase of items with advance procurement funds for an end item that are authorized to be appropriated by law, if such items are required to be purchased significantly earlier than other components, parts, and materials with respect to the same end item.

"(g) DEFINITION.—In this section, the term 'undefinitized contractual action' means a new procurement action entered into by the head of an agency for an amount of more than $25,000 for which the contractual terms, specifications, or price are not agreed upon

before performance is begun under the action. Such term does not include procurement actions entered into on behalf of or in support of foreign military organizations.".

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2325. Undefinitized contractual actions: restrictions.".

(2) EFFECTIVE DATE.—Section 2325 of title 10, United States Code (as added by subsection (a)(1)), applies to undefinitized contractual actions that are entered into after the end of the 180-day period beginning on the date of the enactment of this Act.

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7. AMENDMENT OFFERED BY MR. COURTER OF NEW JERSEY TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

Strike out sections 927 and 928 of the matter proposed to be inserted by the amendment and insert in lieu thereof the following (and redesignate the following sections accordingly):

SEC. 927. DEFENSE ACQUISITION PERSONNEL COMPENSATION AND MANAGEMENT INITIATIVE.

The Secretary of Defense shall develop a plan for a compensation and personnel management initiative to enhance the professionalism of military personnel in acquisition-related positions.

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8. AMENDMENT OFFERED BY MR. COURTER OF NEW JERSEY TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

Strike out section 934 of the matter proposed to be inserted by the amendment and redesignate the following sections accordingly.

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9. AMENDMENT OFFERED BY MR. COURTER OF NEW JERSEY TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

Strike out section 935 of the matter proposed to be inserted by the amendment and redesignate the following sections accordingly.

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10. AMENDMENT OFFERED BY MR. LEVINE OF CALIFORNIA TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

In section 935(b) of the matter proposed to be inserted by the amendment, strike out "full-scale engineering development" and insert in lieu thereof "the advanced development stage".

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11. AMENDMENT OFFERED BY MRS BOXER OF CALIFORNIA TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

In paragraph (a)(1) of section 2326 of title 10, United States Code, as proposed to be added by section 936 of the matter inserted by the amendment, strike out "costs reasonably attributable" and all that follows in that paragraph and insert in lieu thereof "reasonable costs attributable to search and duplication.".

At the end of paragraph (a)(2) of such section, insert the following new sentence: "The fees established in such schedule may not exceed comparable fees established under section 9701 of title 31.".

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12. AMENDMENT OFFERED BY MR. OBERSTAR OF MINNESOTA TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

At the end of the matter proposed to be inserted by the amendment at the end of title IX of division A, add the following:

SEC. 939. SUBCONTRACTOR INFORMATION TO BE PROVIDED TO PROCUREMENT OUTREACH CENTERS.

(a) CONTRACTORS TO FURNISH INFORMATION.—(1) Chapter 142 of title 10, United States Code, is amended—

(A) by redesignating section 2416 as section 2417; and

(B) by inserting after section 2415 the following new section:

"§ 2416. Subcontractor information

"(a) The Secretary of Defense shall require that any defense contractor in any year shall provide to an eligible entity with which the Secretary has entered into a cooperative agreement under this chapter, on the request of such entity, the information specified in subsection (b).

"(b) Information to be provided under subsection (a) is a listing of the name of each appropriate employee of the contractor who has responsibilities with respect to entering into contracts on behalf of such contractor that constitute subcontracts of contracts being performed by such contactor, together with the business address and telephone number and area of responsibility of each such employee.

"(c) A defense contractor need not provide information under this section to a particular eligible entity more frequently than once a year.

"(d) In this section, the term 'defense contractor', for any year, means a person awarded a contract with the Department of Defense in that year for an amount in excess of $100,000.".

(2) The table of sections at the beginning of such chapter is amended by striking out the item relating to section 2416 and inserting in lieu thereof the following new items:

"2416. Subcontractor information.
"2417. Regulation.".

(b) EFFECTIVE DATE.—Section 2416 of title 10, United States Code, as added by subsection (a), shall take effect on January 1, 1987.

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13. AMENDMENT OFFERED BY MR. TRAFICANT OF OHIO TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

At the end of the matter proposed to be inserted by the amendment at the end of title IX of Division A, insert the following:

SEC. 939. PRIORITY FOR DOMESTIC FIRMS WITH RESPECT TO DEFENSE CONTRACTS.

(a) ESTABLISHMENT OF PRIORITY.—

(1) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2408. Contracts: priority for domestic firms

"(a) IN GENERAL.—The Secretary concerned shall award a contract to a domestic firm that, under the use of competitive procedures, would be awarded to a foreign firm if—

"(1) when completely assembled, not less than 50 percent of the final product of the domestic firm would be domestically produced;

"(2) the difference between the bids submitted by the foreign and domestic firms is not more than five percent; and

"(3) the domestic firm is located in a Labor Surplus Area (as defined and identified by the Department of Labor).

"(b) WAIVER.—This section does not apply to the extent to which the Secretary of Defense determines that—

"(1) such application would not be in the public interest; or

"(2) compelling national security considerations require otherwise.

"(c) COMPUTATION OF COST DIFFERENTIAL.—In computing the cost differential under subsection (a)(2), the Secretary of Defense shall not include costs involved in the final assembly of the product.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2408. Contracts: priority for domestic firms.".

(b) EFFECTIVE DATE.—Section 2408 of title 10, United States Code (as added by subsection (a)), shall apply to contracts for which solicitations for bids are issued after the date of the enactment of this Act.

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14. AMENDMENT OFFERED BY MR. ROWLAND OF CONNECTICUT TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

At the end of the matter proposed to be inserted by the amendment at the end of title IX of division A, insert the following:

SEC. 939. PROVISIONS RELATING TO SUBMISSION OF FALSE COST OR PRICING DATA BY DEFENSE CONTRACTORS.

(a) CIVIL AND CRIMINAL ACTIONS.—

(1) IN GENERAL.—Section 2306(f) of title 10, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(6) A civil action under section 3730 of title 31 (relating to civil actions for false claims) may be brought—

"(A) against a prime contractor (or subcontractor) who—

"(i) submits false cost or pricing data under paragraph (1); and

"(ii) knew or should have known that the data was false; and

"(B) against the chief executive officer (or the equivalent of that officer) of a prime contractor (or subcontractor) described in subparagraph (A) if—

"(i) the prime contractor (or subcontractor) did not have in effect an auditing system approved by the Secretary of Defense under paragraph (9) and the officer, in the proper exercise of the authority of the officer, should have known that the data was false; or

"(ii) the officer knew that the data was false.

"(7) A person against whom a judgment is rendered in a civil action brought under section 3730 of title 31 by reason of the provisions of paragraph (6) shall be liable to the United States for—

"(A) a civil penalty of not more than $500,000;

"(B) an amount equal to two times the amount of the damage the United States sustains because of the act of that person in submitting false cost or pricing data; and

"(C) the costs of the civil action.

"(8)(A) If a prime contractor (or subcontractor) submits false cost or pricing data under paragraph (1), and knew or should have known that the data was false, that action shall be considered to be a violation of section 287 of title 18.

"(B) The chief executive officer (or the equivalent of that officer) of a prime contractor (or subcontractor) described in subparagraph (A) shall be considered to have violated section 287 of title 18 if—

"(i) the prime contractor (or subcontractor) did not have in effect an auditing system approved by the Secretary of Defense under paragraph (9) and the officer, in the proper exercise of the authority of the officer, should have known that the data was false; or

"(ii) the officer knew that the data was false.

"(9) The Secretary of Defense may approve an auditing system for a prime contractor (or subcontractor) that—

"(A) is designed to detect fraud or overcharges with respect to contracts with the Department of Defense;

"(B) provides for notice to the Secretary of any such fraud or overcharge; and

"(C) is determined by the Secretary to meet minimum standards established by the Secretary with respect to—

"(i) frequency of audits;

"(ii) program integrity; and

"(iii) such other matters as the Secretary determines.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to submissions of cost or pricing data made on or after the date of the enactment of this Act.

(b) PROVISIONS RELATING TO DEBARMENT OF DEFENSE CONTRACTORS.—Section 2393 of title 10, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

"(c)(1) The Secretary of Defense or the Secretary of a military department may not debar a prime contractor (or subcontractor) unless the United States commences an action in the United States District Court for the District of Columbia to debar that prime contractor (or subcontractor) and—

"(A) the prime contractor (or subcontractor) does not file a motion with respect to that action before the end of the 90-day period beginning on the date that the action is filed; or

"(B) the Court decides the action in favor of the United States.

"(2) It is the duty of the District Court for the District of Columbia to advance on the docket and to expedite to the greatest possible extent the disposition of any action brought under paragraph (1).".

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15. AMENDMENT OFFERED BY MR. COOPER OF TENNESSEE TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

At the end of the amendment, add the following:

Strike out subsection (a) of section 911 (page 174, line 6, through page 175, line 12).

Page 175, line 13, strike out "(b)" and insert in lieu thereof "(a)".

Page 175, line 15, strike out "further".

Page 176, line 1, strike out "(c)" and insert in lieu thereof "(b)".

Page 178, line 14, strike out "(d)" and insert in lieu thereof "(c)".

Strike out subsection (e) of section 911 (page 179, line 15, through page 180, line 15).

Page 180, line 16, strike out "(f)" and insert in lieu thereof "(d)".

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16. AMENDMENT OFFERED BY MR. ASPIN OF WISCONSIN TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

At the end of the amendment, add the following:

Page 179, line 19, strike out "(2)" and insert in lieu thereof "(2)(A)".

Page 179, line 22, insert "in the industry categories described in subparagraph (B)" after "business concerns".

Page 179, after line 23, insert the following new subparagraph:

"(B) Subparagraph (A) shall apply only to business concerns in the following industry categories:

"(i) Construction.

"(ii) Architectural and engineering services (including surveying and mapping services).

"(iii) Ship building and ship repair.

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17. AMENDMENT OFFERED BY MR. COURTER OF NEW JERSEY TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

At the end of the amendment, add the following:

Strike out section 921 (page 201, line 16, through page 208, line 19) and insert in lieu thereof the following new section:

SEC. 921. SAFEGUARDING OF MILITARY WHISTLEBLOWERS.

(a) FINDINGS.—The Congress makes the following findings:

(1) In the course of their duties, members of the Armed Forces may become aware of information evidencing wrongdoing or waste of funds.

(2) It is generally the duty of members of the Armed Forces to report such information through the chain of command.

(3) Members of the Armed Forces who become aware of such information should be encouraged to disclose it to an Inspector General, and, if necessary, to a Member of Congress.

(4) Members of the Armed Forces who disclose such information should be protected from adverse personnel consequences (or threats thereof) as a result of such disclosures.

(5) Members of the Armed Forces who believe they have been subject to retaliation (or the threat thereof) should have the right to an expeditious Inspector General investigation and administrative review of their cases.

(b) WHISTLEBLOWER PROTECTION.—(1) Section 1034 of title 10, United States Code, relating to communicating with a Member of Congress, is amended to read as follows:

"§ 1034. Communicating with a Member of Congress or Inspector General

"(a) RESTRICTING COMMUNICATIONS WITH MEMBERS OF CONGRESS AND INSPECTORS GENERAL PROHIBITED.—

"(1) GENERAL RULE.—No person may restrict a member of an armed force in communicating with a Member of Congress or an Inspector General.

"(2) EXCEPTIONS.—Paragraph (1) does not apply to a communication that—

"(A) is unlawful; or

"(B) violates a regulation necessary to the security of the United States.

"(b) PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.—No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of an armed force for making or preparing a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted.

"(c) INSPECTOR GENERAL INVESTIGATION.—

"(1) INVESTIGATION OF CERTAIN ALLEGATIONS.—The Inspector General of the Department of Defense shall expeditiously investigate an allegation by a member of the armed forces that a reprisal prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication to a Member of Congress or an Inspector General making a complaint or disclosing information that the member of the armed forces reasonably believes evidences a violation of a law, rule, or regulation in connection with a gross waste or mismanagement of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(2) TIME FOR ALLEGATION.—The Inspector General is not required to make an investigation under paragraph (1) in the case of an allegation made more than 90 days after the reprisal (or threatened reprisal) that is the subject of the allegation.

"(3) INVESTIGATION OF SUBJECT MATTER OF DISCLOSURE.—If the Inspector General has not already done so, the Inspector General shall commence a separate investigation of the information that the member believes evidences wrongdoing as described in subparagraph (A) or (B) of paragraph (1).

"(4) REPORT.—Not later than 10 days after completion of an investigation under this subsection, the Inspector General shall submit a report on the results of the investigation to the Secre-

tary of Defense. The Inspector General shall provide a copy of the unclassified portions of that report to the member concerned.

"(5) TIME FOR REPORT.—If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (2) within 30 days of the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense and to the member making the allegation a notice—

"(A) of that determination (including the reasons why the report may not be submitted within that time); and

"(B) of the time when the Inspector General anticipates the report will be submitted.

"(6) CONTENT OF REPORT.—The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. If a person agrees to be interviewed only on the condition that the person's identity not be disclosed, the report shall not contain any information which might disclose the identity of that person. The report shall contain no findings of fact or recommendations as to the disposition of the complaint.

"(7) DELEGATION.—The Inspector General of the Department of Defense may delegate any function, power, or duty of the Inspector General under this subsection to any other Inspector General in the Department of Defense.

"(d) CORRECTION OF RECORDS.—

"(1) BOARDS FOR CORRECTION OF MILITARY RECORDS.—A correction board acting under section 1552 of this title, in considering the request of a member of an armed force to whom the Inspector General has provided a report under subsection (c), or the heir or legal representative of such a member, to correct the effects of an alleged retaliatory personnel action prohibited under subsection (b), may—

"(A) direct further investigation;

"(B) direct the production of evidence;

"(C) direct the examination of witnesses;

"(D) receive oral argument; or

"(E) direct or conduct an evidentiary hearing.

"(2) BOARD DECISIONS.—The Board shall issue a final decision with respect to the petition within 180 days after the filing of such petition. If the Board fails to issue such a final decision within such time, the member shall be deemed to have exhausted administrative remedies under section 1552 of this title to the extent that such exhaustion may be required in any judicial proceeding concerning the relief sought in the petition for correction. The decision of the Board shall be in writing and shall include its findings of fact, conclusions, recommendations, and a statement of reasons for the decision. The Board shall cause its decision to be served on the petitioner by first class mail to the address listed in the petition for correction within 10 days of the date of the decision. A determination by

the Secretary by a preponderance of the evidence that a personnel action adversely affecting a member would not have been taken in the absence of a complaint or disclosure of information described in subsection (c)(1) shall constitute a determination of a prohibited retaliatory personnel action under subsection (b).

"(3) CORRECTIVE ACTION.—The Secretary shall order such action as is necessary to correct the record and the effect of a prohibited retaliatory personnel action.

"(4) DISCIPLINARY ACTION.—If the Secretary determines that a prohibited retaliatory personnel action, as defined in subsection (b), has occurred, the Board shall refer the record of the matter to the Secretary concerned.

"(e) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section. Such regulations shall include regulations for which violations are subject to section 892 of this title (article 92 of the Uniform Code of Military Justice).".

(2) The item relating to such section in the table of sections at the beginning of chapter 53 of such title is amended to read as follows:

"1034. Communicating with a Member of Congress or Inspector General.".

(c) DEADLINE FOR REGULATIONS.—The Secretary of Defense and the Secretary of Transportation shall prescribe regulations required by subsection (e) of section 1034 of title 10, United States Code, as added by subsection (a), not later than 120 days after the date of the enactment of this Act.

Strike out section 922 (page 208, line 20, through page 212, line 13), and redesignate the following sections accordingly.

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18. AMENDMENT OFFERED BY MR. COURTER OF NEW JERSEY TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

At the end of the amendment, add the following:

Strike out section 921 (page 201, line 16 through page 208, line 19) and insert in lieu thereof the following new section:

SEC. 921. SAFEGUARDING OF MILITARY WHISTLEBLOWERS.

(a) FINDINGS.—The Congress makes the following findings:

(1) In the course of their duties, members of the Armed Forces may become aware of information evidencing wrongdoing or waste of funds.

(2) It is generally the duty of members of the Armed Forces to report such information through the chain of command.

(3) Members of the Armed Forces who become aware of such information should be encouraged to disclose it to an Inspector General, and, if necessary, to a Member of Congress.

(4) Members of the Armed Forces who disclose such information should be protected from adverse personnel consequences (or threats thereof) as a result of such disclosures.

(5) Members of the Armed Forces who believe they have been subject to retaliation (or the threat thereof) should have

the right to an expeditious Inspector General investigation and administrative review of their cases.

(b) WHISTLEBLOWER PROTECTION.—(1) Section 1034 of title 10, United States Code, relating to communicating with a Member of Congress, is amended to read as follows:

"§ 1034. Communicating with a Member of Congress or Inspector General

"(a) RESTRICTING COMMUNICATIONS WITH MEMBERS OF CONGRESS AND INSPECTORS GENERAL PROHIBITED.—

"(1) GENERAL RULE.—No person may restrict a member of an armed force in communicating with a Member of Congress or an Inspector General.

"(2) EXCEPTIONS.—Paragraph (1) does not apply to a communication that—

"(A) is unlawful; or

"(B) violates a regulation necessary to the security of the United States.

"(b) PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.—No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of an armed force for making or preparing a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted.

"(c) INSPECTOR GENERAL INVESTIGATION.—

"(1) INVESTIGATION OF CERTAIN ALLEGATIONS.—The Inspector General of the Department of Defense shall expeditiously investigate an allegation by a member of the armed forces that a reprisal prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication to a Member of Congress or an Inspector General making a complaint or disclosing information that the member of the armed forces reasonably believes evidences a violation of a law, rule, or regulation in connection with a gross waste or mismanagement of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(2) TIME FOR ALLEGATION.—The Inspector General is not required to make an investigation under paragraph (1) in the case of an allegation made more than 90 days after the reprisal (or threatened reprisal) that is the subject of the allegation.

"(3) INVESTIGATION OF SUBJECT MATTER OF DISCLOSURE.—If the Inspector General has not already done so, the Inspector General shall commence a separate investigation of the information that the member believes evidences wrongdoing as described in subparagraph (A) or (B) of paragraph (1).

"(4) REPORT.—Not later than 10 days after completion of an investigation under this subsection, the Inspector General shall submit a report on the results of the investigation to the Secretary of Defense. The Inspector General shall provide a copy of the unclassified portions of that report to the member concerned.

"(5) TIME FOR REPORT.—If, in the course of an investigation of an allegation under this section, the Inspector General deter-

mines that it is not possible to submit the report required by paragraph (2) within 30 days of the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense and to the member making the allegation a notice—

"(A) of that determination (including the reasons why the report may not be submitted within that time); and

"(B) of the time when the Inspector General anticipates the report will be submitted.

"(6) CONTENT OF REPORT.—The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. If a person agrees to be interviewed only on the condition that the person's identity not be disclosed, the report shall not contain any information which might disclose the identity of that person. The report shall contain no findings of fact or recommendations as to the disposition of the complaint.

"(7) DELEGATION.—The Inspector General of the Department of Defense may delegate any function, power, or duty of the Inspector General under this subsection to any other Inspector General in the Department of Defense.

"(d) CORRECTION OF RECORDS.—

"(1) BOARDS FOR CORRECTION OF MILITARY RECORDS.—A correction board acting under section 1552 of this title, in considering the request of a member of an armed force to whom the Inspector General has provided a report under subsection (c), or the heir or legal representative of such a member, to correct the effects of an alleged retaliatory personnel action prohibited under subsection (b), may—

"(A) direct further investigation;

"(B) direct the production of evidence;

"(C) direct the examination of witnesses;

"(D) receive oral argument; or

"(E) direct or conduct an evidentiary hearing.

"(2) BOARD DECISIONS.—The Board shall issue a final decision with respect to the petition within 180 days after the filing of such petition. If the Board fails to issue such a final decision within such time, the member shall be deemed to have exhausted administrative remedies under section 1552 of this title to the extent that such exhaustion may be required in any judicial proceeding concerning the relief sought in the petition for correction. The decision of the Board shall be in writing and shall include its findings of fact, conclusions, rcommendations, and a statement of reasons for the decision. The Board shall cause its decision to be served on the petitioner by first class mail to the address listed in the petition for correction within 10 days of the date of the decision. A determination by the Secretary by a preponderance of the evidence that a personnel action adversely affecting a member would not have been taken in the absence of a complaint or disclosure of information described in subsection (c)(1) shall constitute a determi-

nation of a prohibited retaliatory personnel action under subsection (b).

"(3) CORRECTIVE ACTION.—The Secretary shall order such action as is necessary to correct the record and the effect of a prohibited retaliatory personnel action.

"(4) DISCIPLINARY ACTION.—If the Secretary determines that a prohibited retaliatory personnel action, as defined in subsection (b), has occurred, the Board shall refer the record of the matter to the Secretary concerned.

"(e) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section. Such regulations shall include regulations for which violations are subject to section 892 of this title (article 92 of the Uniform Code of Military Justice).".

(2) The item relating to such section in the table of sections at the beginning of chapter 53 of such title is amended to read as follows:

"1034. Communicating with a Member of Congress or Inspector General.".

(c) DEADLINE FOR REGULATIONS.—The Secretary of Defense and the Secretary of Transportation shall prescribe regulations required by subsection (e) of section 1034 of title 10, United States Code, as added by subsection (a), not later than 120 days after the date of the enactment of this Act.

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19. AMENDMENT OFFERED BY MR. COURTER OF NEW JERSEY TO THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

At the end of the amendment, add the following:

Strike out section 922 (page 208, line 20 through page 212, line 13), and redesignate the following sections accordingly.

AMENDMENTS TO THE SUBSTITUTE AMENDMENT OFFERED BY MR. COURTER OF NEW JERSEY FOR THE AMENDMENT OFFERED BY MR. MAVROULES OF MASSACHUSETTS

20. AMENDMENT OFFERED BY MRS. BOXER OF CALIFORNIA TO THE SUBSTITUTE OFFERED BY MR. COURTER OF NEW JERSEY

Strike out the amendment proposed by the substitute to section 923 of the bill and insert in lieu thereof the following:

Strike out section 923 (page 212, lines 14 through 19) and redesignate the following sections accordingly.

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21. AMENDMENT OFFERED BY MR. DICKINSON OF ALABAMA TO THE SUBSTITUTE OFFERED BY MR. COURTER OF NEW JERSEY

Insert the following new subsection after subsection (a) of section 2326 of title 10, United States Code (as proposed to be added by section 932 of the matter proposed to be inserted by the substitute), and redesignate the following subsections accordingly.

"(b) DISPOSITION OF RECEIPTS.—Amounts collected under this section shall be retained by the Department of Defense and shall be

credited to the account from which the costs were incurred in complying with requests under this section.

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22. AMENDMENT OFFERED BY MR. OBERSTAR OF MINNESOTA TO THE SUBSTITUTE OFFERED BY MR. COURTER OF NEW JERSEY

At the end of the matter proposed to be inserted by the substitute at the end of title IX of division A, add the following:

SEC. 935. SUBCONTRACTOR INFORMATION TO BE PROVIDED TO PROCUREMENT OUTREACH CENTERS.

(a) CONTRACTORS TO FURNISH INFORMATION.—(1) Chapter 142 of title 10, United States Code, is amended—

(A) by redesignating section 2416 as section 2417; and

(B) by inserting after section 2415 the following new section:

"§ 2416. Subcontractor information

"(a) The Secretary of Defense shall require that any defense contractor in any year shall provide to an eligible entity with which the Secretary has entered into a cooperative agreement under this chapter, on the request of such entity, the information specified in subsection (b).

"(b) Information to be provided under subsection (a) is a listing of the name of each appropriate employee of the contractor who has responsibilities with respect to entering into contracts on behalf of such contractor that constitute subcontracts of contracts being performed by such contractor, together with the business address and telephone number and area of responsibility of each such employee.

"(c) A defense contractor need not provide information under this section to a particular eligible entity more frequently than once a year.

"(d) In this section, the term 'defense contractor', for any year, means a person awarded a contract with the Department of Defense in that year for an amount in excess of $100,000.".

(2) The table of sections at the beginning of such chapter is amended by striking out the item relating to section 2416 and inserting in lieu thereof the following new items:

"2416. Subcontractor information.
"2417. Regulation.".

(b) EFFECTIVE DATE.—Section 2416 of title 10, United States Code, as added by subsection (a), shall take effect on January 1, 1987.

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23. AMENDMENT OFFERED BY MR. ROWLAND OF CONNECTICUT TO THE SUBSTITUTE OFFERED BY MR. COURTER OF NEW JERSEY

At the end of the matter proposed to be inserted by the substitute at the end of title IX of division A, insert the following:

SEC. 935. PROVISIONS RELATING TO SUBMISSION OF FALSE COST OR PRICING DATA BY DEFENSE CONTRACTORS.

(a) CIVIL AND CRIMINAL ACTIONS.—

(1) IN GENERAL.—Section 2306(f) of title 10, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(6) A civil action under section 3730 of title 31 (relating to civil actions for false claims) may be brought—

"(A) against a prime contractor (or subcontractor) who—

"(i) submits false cost or pricing data under paragraph (1); and

"(ii) knew or should have known that the data was false; and

"(B) against the chief executive officer (or the equivalent of that officer) of a prime contractor (or subcontractor) described in subparagraph (A) if—

"(i) the prime contractor (or subcontractor) did not have in effect an auditing system approved by the Secretary of Defense under paragraph (9) and the officer, in the proper exercise of the authority of the officer, should have known that the data was false; or

"(ii) the officer knew that the data was false.

"(7) A person against whom a judgment is rendered in a civil action brought under section 3730 of title 31 by reason of the provisions of paragraph (6) shall be liable to the United States for—

"(A) a civil penalty of not more than $500,000;

"(B) an amount equal to two times the amount of the damage the United States sustains because of the act of that person in submitting false cost or pricing data; and

"(C) the costs of the civil action.

"(8)(A) If a prime contractor (or subcontractor) submits false cost or pricing data under paragraph (1), and knew or should have known that the data was false, that action shall be considered to be a violation of section 287 of title 18.

"(B) The chief executive officer (or the equivalent of that officer) of a prime contractor (or subcontractor) described in subparagraph (A) shall be considered to have violated section 287 of title 18 if—

"(i) the prime contractor (or subcontractor) did not have in effect an auditing system approved by the Secretary of Defense under paragraph (9) and the officer, in the proper exercise of the authority of the officer, should have known that the data was false; or

"(ii) the officer knew that the data was false.

"(9) The Secretary of Defense may approve an auditing system for a prime contractor (or subcontractor) that—

"(A) is designed to detect fraud or overcharges with respect to contracts with the Department of Defense;

"(B) provides for notice to the Secretary of any such fraud or overcharge; and

"(C) is determined by the Secretary to meet minimum standards established by the Secretary with respect to—

"(i) frequency of audits;

"(ii) program integrity; and

"(iii) such other matters as the Secretary determines.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to submissions of cost or pricing data made on or after the date of the enactment of this Act.

(b) PROVISIONS RELATING TO DEBARMENT OF DEFENSE CONTRACTORS.—Section 2393 of title 10, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

"(c)(1) The Secretary of Defense or the Secretary of a military department may not debar a prime contractor (or subcontractor) unless the United States commences an action in the United States District Court for the District of Columbia to debar that prime contractor (or subcontractor) and—

"(A) the prime contractor (or subcontractor) does not file a motion with respect to that action before the end of the 90-day period beginning on the date that the action is filed; or

"(B) the Court decides the action in favor of the United States.

"(2) It is the duty of the District Court for the District of Columbia to advance on the docket and to expedite to the greatest possible extent the disposition of any action brought under paragraph (1).".

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24. AMENDMENT OFFERED BY MR. TRAFICANT OF OHIO TO THE SUBSTITUTE OFFERED BY MR. COURTER OF NEW JERSEY

At the end of the matter proposed to be inserted by the substitute at the end of title IX of division A, insert the following:

SEC. 935. PRIORITY FOR DOMESTIC FIRMS WITH RESPECT TO DEFENSE CONTRACTS.

(a) ESTABLISHMENT OF PRIORITY.—

(1) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2408. Contracts: priority for domestic firms

"(a) IN GENERAL.—The Secretary concerned shall award a contract to a domestic firm that, under the use of competitive procedures, would be awarded to a foreign firm if—

"(1) when completely assembled, not less than 50 percent of the final product of the domestic firm would be domestically produced;

"(2) the difference between the bids submitted by the foreign and domestic firms is not more than five percent; and

"(3) the domestic firm is located in a Labor Surplus Area (as defined and identified by the Department of Labor).

"(b) WAIVER.—This section does not apply to the extent to which the Secretary of Defense determines that—

"(1) such application would not be in the public interest; or

"(2) compelling national security considerations require otherwise.

"(c) COMPUTATION OF COST DIFFERENTIAL.—In computing the cost differential under subsection (a)(2), the Secretary of Defense shall not include costs involved in the final assembly of the product.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2408. Contracts: priority for domestic firms.".

(b) EFFECTIVE DATE.—Section 2408 of title 10, United States Code (as added by subsection (a)), shall apply to contracts for which solicitations for bids are issued after the date of the enactment of this Act.

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25. AMENDMENT OFFERED BY MR. ASPIN OF WISCONSIN TO THE SUBSTITUTE OFFERED BY MR. COURTER OF NEW JERSEY

At the end of the substitute, add the following:

Page 179, line 19, strike out "(2)" and insert in lieu thereof "(2)(A)".

Page 179, line 22, insert "in the industry categories described in subparagraph (B)" after "business concerns".

Page 179, after line 23, insert the following new subparagraph:

"(B) Subparagraph (A) shall apply only to business concerns in the following industry categories:

"(i) Construction.

"(ii) Architectural and engineering services (including surveying and mapping services).

"(iii) Ship building and ship repair.

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